IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1488 OF 2004

IN

SUIT NO.1442 of 2004

Kavita Hingorani. ... Plaintiff.

vs.

Mr.Harish Kishinchand Chandnani. ... Defendant.

Mr.D.D.Madan i/b. M/s.Thakore Jariwala & Associates, for Plaintiff.

Mr.Subodh Joshi i/b. K.C.Devnani, for Defendant.

CORAM: D.K.DESHMUKH,J.

DATED: 1st April,2005

P.C.:-

1. This is a Notice of Motion taken out by the plaintiff. The plaintiff has filed the suit for specific performance of the agreement dated 4.11.2003. The agreement was for transfer of a flat admittedly owned by the defendant, to the plaintiff. The agreed consideration was Rs.66,73,000/- (Rupees Sixty Six lakhs Seventy Three thousands only). Out of that amount Rs.13,73,000/- (Rupees Thirteen lakhs Seventy Three thousands only) was paid on the date of the agreement, and Rs.3,00,000/- (Rupees Three lakhs only) was paid on 15th

November,2003. The balance amount of Rs.50,00,000/- (Rupees Fifty Lakhs only) was to be paid on or before 31.1.2004 and the transfer was to be effected. Admittedly, the amount of Rs.50,00,000/- has not been paid by the plaintiff to the defendant as agreed by the Deed. The justification of the plaintiff is that she was to take this amount as a loan from the Bank and pay out to the defendant. She had approached the Bank and the Bank had agreed to advance the loan, but because the defendant did not supply the original title deed of the property, the plaintiff could not take the amount of loan from the Bank and pay it to the defendant. In the agreement, I do not see any obligation cast on the defendant to supply to the plaintiff title deed of the property even before the payment of full amount of the consideration, to enable the plaintiff to take loan from the Bank. Therefore, prima facie it appears that breach of the agreement is committed by the plaintiff. The learned Counsel appearing for the plaintiff, however, states that the plaintiff is willing to deposit the amount of Rs.50,00,000/- (Rupees Fifty lakhs only) in this Court provided the defendant agrees to give vacant possession of the flat to the plaintiff. The offer is not accepted by the defendant. In my opinion, the defendant is justified in not accepting the offer., because as observed above, prima facie the plaintiff has committed breach of the agreement. The learned Counsel for defendant submitted that the defendant is willing to deposit the amount of Rs.16,73,000/- which is paid by the plaintiff to the defendant as earnest money, and will also give two weeks notice to the plaintiff before transferring the flat.

2. Taking overall view of the matter therefore, in my opinion, following order would meet the ends of justice:-

3. The defendant is restrained from transferring the suit flat unless he deposits amount of Rs.16,73,000/- in this Court with due notice to the plaintiff and gives two weeks notice to the plaintiff that he is transferring the flat. In other words, the defendant would be entitled to transfer the flat after depositing the amount of Rs.16,73,000/- in this Court with due notice to the plaintiff and after expiry of period of two weeks from the date on which the amount is deposited and notice of the intention of the defendant to transfer the flat, is given to the plaintiff.

4. The Prothonotary and Senior Master of this Court is directed to invest the said amount in Fixed deposit in any nationalised bank during the pendency of the suit.

Notice of Motion disposed of.